

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CHARLES WILLIAM ROBERTSON,  
TDCJ-CID NO.1467719,  
Plaintiff,

v.

TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE,  
Defendant.

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CIVIL ACTION NO. H-09-3073

MEMORANDUM ON DISMISSAL

Charles William Robertson, an inmate incarcerated in the Texas Department of Criminal Justice - Correctional Institutions Division (TDCJ-CID), filed a motion for a temporary restraining order, which the Midland-Odessa District Court construed as a civil rights complaint and transferred to this Court. (Docket Entry No.1). Pending is plaintiff's application to proceed *in forma pauperis*. (Docket Entry No. 20). A prisoner, however, cannot file a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action which was dismissed for being frivolous, malicious, or failing to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). The only exception to revocation of an inmate's privilege to proceed *in forma pauperis* is if he is in immediate danger of serious physical harm. Banos v. O'Guin, 144 F.3d 883, 884 (5th Cir. 1998). Plaintiff's complaint does not indicate that he is any danger of imminent physical harm.

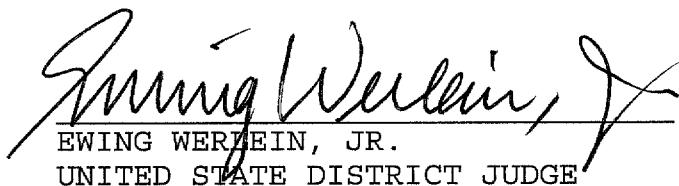
Plaintiff's litigation history reveals that he falls within the provisions of section 1915(g). See Robertson v. Livingston, Civil Action No.H-09-2231 (S.D. Tex. Sept. 30, 2009) (enumerating frivolous dismissals).

Accordingly, the Court ORDERS the following:

1. Plaintiff's application to proceed *in forma pauperis* (Docket Entry No.20) is DENIED.
2. Plaintiff's complaint is DISMISSED, without prejudice.
3. All other pending motions are DENIED.

The Clerk will provide a copy of this order to the plaintiff and a copy by facsimile transmission, regular mail, or e-mail to the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas, 78711, Fax: 512-936-2159, and the District Clerk for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-Strikes List.

Signed at Houston, Texas, on October 27, 2009.

  
EWIN WERLEIN, JR.  
UNITED STATE DISTRICT JUDGE